

**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

29931

**FILE:** B-216309

**DATE:** December 4, 1984

**MATTER OF:** Military Base Management, Inc.

**DIGEST:**

Agency properly canceled solicitation after bid opening where it determines that sufficient funds are not available to make award.

Military Base Management, Inc. (MBM), protests the cancellation of invitation for bids (IFB) No. 130-020-4 issued by the Department of Justice, Federal Bureau of Prisons, for a complete food program at the Federal Prison Camp, Duluth, Minnesota. Justice decided to cancel the IFB after bid opening because the bids were excessive and insufficient funds were available. MBM contends that the cancellation was improper because its bid was reasonable and that this procurement was conducted in bad faith.

We deny the protest.

Seven bids were received at bid opening. MBM was the apparent low bidder. Its total bid price for the 1-year term of the contract was \$774,319.59 on the basis of the bid, excluding the cost of salad toppings. The contracting activity subsequently determined that the bids received were at unreasonable prices and it decided to cancel the solicitation. It then informed bidders of the cancellation and that the activity would establish a staff-operated food service program instead of making an award.

In its report responding to the protest, Justice also indicated that it had projected this contract to cost \$590,000 and, therefore, allotted only that amount of money to fund this contract. After opening bids and

030720

realizing that the cost of the contract would be higher than that estimated, the contracting officer attempted to secure additional funding, but was unsuccessful. Justice therefore determined that it had insufficient funds for the award of a contract to MBM. It argues that this is an additional proper basis for canceling the solicitation.

MBM contends that Justice has not furnished any basis for the determination that MBM's bid price was unreasonable. MBM states that its bid price was reasonable and, in support of this contention, it presents figures which show that its hourly wage rates for employees are considerably lower than the government's and it asserts that its food cost is "as fair and competitive as possible."

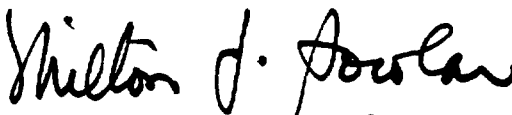
It also maintains that Justice has acted in bad faith throughout the procurement process. MBM contends, for example, that Justice solicited bids only to meet its regulatory requirements and actually intended to provide this program by in-house performance. It states that this is evidenced by the fact that the agency had contracted for these services the previous year and, therefore, should have known the cost of this contract. MBM adds that Justice misled bidders by not specifying the limited amount of funding available for this contract and it suggests that additional funding is actually available. MBM also points out that the agency failed to provide a detailed analysis of its estimate and it asserts that the agency cannot provide this food service at such a low cost without being federally subsidized. Finally, in light of the extra cost for salad toppings, it questions the Food Service Administrator's recommendation after bid opening that salad toppings be included in evaluating bids for award.

Cancellation of a solicitation after bids have been opened and prices have been exposed is not permitted unless a cogent and compelling reason for cancellation exists. International Alliance of Sports Officials, B-211049, B-211049.2, May 24, 1983, 83-1 C.P.D. ¶ 562. In this connection, our Office has held that an agency's determination that funds are not available for contract

obligation is a sufficient reason upon which to cancel a solicitation and it is not our role to question the unavailability of funds. American Construction Management, B-211859, June 6, 1983, 83-1 C.P.D. ¶ 611. Thus, Justice's determination of the unavailability of funds provided a proper and sufficient basis for cancellation in this instance. See Allstate Flooring Company, Inc., 205661.2, Oct. 15, 1982, 82-2 C.P.D. ¶ 337.

Since we have found that the determination of the unavailability of funds was a sufficient basis for the cancellation, we need not consider MBM's arguments concerning the agency's determination of price unreasonableness as a basis for cancellation. We also note that although the agency initially presented the determination of price unreasonableness as the sole basis for cancellation, our review is based on whether the agency action is supportable, not on whether it is properly documented or supported at the time it is taken. See Spruill Realty/Construction Co., B-209148.2, Jan. 31, 1983, 83-1 C.P.D. ¶ 102.

Finally, with regard to MBM's other bases for contending that Justice acted in bad faith, these matters are academic for, even if we sustain the protest on any of these bases, Justice could not award a contract under the solicitation since sufficient funds are not available.

*for*   
Comptroller General  
of the United States